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Hungarian Lawyers in the Making: Selection Distortions after the Democratic Changes in Hungary

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The aim of the present study is to describe the major actors of the Hungarian judiciary in the light of the changes in the legal sphere following the peaceful revolution of 1989, taking into account the results of a number of research studies carried out from a legal sociological perspective. It appears that the role and structure of the Hungarian legal profession both changed quite markedly after the changeover owing to the new social and economic conditions, particularly because of the opportunities provided by the new market economy. In addition to offering a description of Hungarian lawyers, a major aim of ours here is to draw attention to a problem that, in our opinion, is the chief cause of the underlying defects in the judiciary system, namely the faults in the recruitment of the actors of the judiciary. This phenomenon persists even now in the public sector, and poses a problem that needs to addressed.

The legal profession in Hungary is generally of a high standard because of the elitist approach which once prevailed in the university education system, reinforced by a technocratic attitude characterising the Bench from the final period of the one-party system. However, the recruitment process in the legal profession is somewhat problematic, and it is our firm belief that the quality of the administration of justice can be improved only if the recruitment process is thoroughly examined and revised.

In today's Hungary, political discourse focuses on the issue of European integration. However as regards the problems of the legal system and the judiciary, fairly little attention has been given in relation to the accession process. This may be explained in part by the fact that our legal system is generally considered democratic, the ongoing legal harmonisation process being right on track with the Brussels framework. Furthermore, the judiciary system virtually conforms to the European standards. As the measurement of the efficacy of the judiciary is rather problematic beyond certain basic facts (e.g. protracted legal cases), it is very easy to make such claims. Nevertheless, the process of modernisation through legislation can in itself never truly reflect the real state of the judiciary. The mere adoption of rules does not solve the problem of enforcement. The failure of the constitutional attempts in certain developing countries is a perfect example of this. Adopting the most democratic legal principles in constitutions and codes is of no avail if their enforcement is frustrated by natural social resistance or by the given conditions of the implementation of law. Since the political changeover, Hungary has definitely taken a major step towards the democratisation of both the legal and judiciary systems. Numerous acts of historic importance have come into being. Still, only the radical legal positivists and normativists believe that all problems can be ironed out in this way.

In order to reveal the true state of the Hungarian judiciary, the sociology of law or, to be more precise, the analysis of Hungarian lawyers from a sociological angle is surely of the utmost importance. Unfortunately, there was scarcely any opportunity for such an analysis in the former era. Then, sociology as an exact science was to be refuted or merely tolerated by the ideologists of the Communist party. The sharp conflicts between ideology and reality understandably irritated those who were well aware of the differences between the party propaganda and the actual situation. Nevertheless, the discipline gained some ground from the 1970s, and even comprehensive research was

carried out concerning Hungarian lawyers.[1] Yet the results of this research became quite outdated following the dramatic events of the changeover, hence they cannot really contribute to the understanding of the present situation.

In the past ten years the scope of research on lawyers has gradually broadened. Nevertheless, we still lack empirical studies which could assist us in the formulation of theories and provide a method for handling current problems.

In Hungary, because of the peaceful nature of the change in the political system, there has been no radical replacement of staff within the judiciary. Popular demand for such replacement has been lacking, with the exception of some radical political forces. The view that some judges should be removed – which has been around in some form or other since the 70s – would have paralysed the judiciary anyway had it been acted upon. As we will see later on, it has merely led to slight increase in mobility within the legal profession.

All this contributed to the fact that the characteristic phenomena of the socialist era, such as the capitalising on personal relationships, certain attitudes of the legal profession, and methods of legal interpretation survived or emerged in a different form later on. This is a rather involved problem, the analysis of which would require the investigation of the period before World War II as well. However, its major constituents are known and readily understandable even without resorting to such an in-depth study. In addition it appears that even without falling victim to normativism, one could reasonably expect legislative action to produce relatively rapid and profound changes in this field. The personality and attitudes of a judge or prosecutor are generally difficult to influence. However, the regulation governing their selection can be altered much more easily so as to promote a process that is fairer and sounder than the present one. An existing and functional recruitment system is called for where applicants with the most suitable personal and professional profiles are given priority. We are convinced that in countries operating a career system, i.e. one where legal actors of the judiciary are not elected but appointed, the standards of the administration of justice seem better and fairer.

1. Problems of Methodology

The aim of the present research has been to describe the actors of the Hungarian judiciary in the post-socialist period, paying particular attention to the mechanisms of selection and recruitment. A prerequisite for conducting such a survey was to define the target group that would serve as an object for our investigation.

In Hungary the term „legal actors of the judiciary" is normally used in a restricted sense, covering only persons with a law degree working for state institutions directly responsible for the administration of justice, i.e. the Courts.[2] However we considered it more appropriate to have recourse to a definition with a broader meaning including also the public prosecutors exercising their functions in criminal investigations and legal

[1] ANGELUSZ RÓBERT, BALOGH ZOLTÁN, KÖRMENDY MÁRIA, LEDERER PÁL, SZÉKELY MÁRIA: A jogászság társadalmi helyzete és szakmai életútja. *Szociológiai füzetek*. Oktatási Minisztérium Marxizmus-Leninizmus Oktatási Főosztálya. Budapest: 1977. p. 13.

[2] FŰRÉSZ KLÁRA: Az igazságszolgáltatás alkotmányos szabályozása. *Társadalmi Szemle* 1998. 50: 46–53.

proceedings before the Courts, the attorneys who play a significant role in settling legal disputes and the public notaries authorised under Hungarian law to discharge important duties generally carried out by state organs in other countries.[3]

Bearing in mind the aims of our study, we decided to extend our survey to cover Hungarian law students as well since they represent the recruiting basis of future legal actors. By doing so we had the opportunity of acquiring background information that facilitated the understanding of the primary target groups of our research. In addition, this extension enabled us to discover and analyse a „pre-recruiting" stage of the whole recruiting process.

It seemed more convenient to divide the target group of our research into clearly defined sub-categories because the diverse characteristics of legal actors in general make it virtually impossible to study this group as a whole. Thus we were able to determine the general or particular character of certain developments by comparing these separate but closely related sub-categories.[4]

As regards the strategy of the study, our fact-finding method essentially consisted of the documentary analysis and evaluation of the results of previous surveys conducted in this field. Occasionally we also had to resort to standardised interviews in order to verify dubious information or unreliable sources.

However, as regards the flaws in the recruitment process it seemed most suitable to conduct in-depth interviews. It is well known that the sensibility of the person being interviewed depends on the topics to which the questions are related. Those questions that are considered annoying or embarrassing are frequently referred to as „difficult" questions.[5] The persons interviewed in a survey are usually unwilling to answer such questions, or will offer a reply of „no-opinion".[6] The scope and nature of the „difficult" questions are influenced by various factors including social environment. Due to the conditions prevailing in the Hungarian society the recruitment problems of the legal actors of the judiciary may definitely be classified as „difficult" questions. This state of affairs can mainly be attributed to the isolated and uncommunicative nature of the judiciary in general, but the fear that information about the problems of the profession might leak out and the possible external criticism it might provoke are also contributory elements.[7]

Under such circumstances standardised interviews or questionnaires circulated by mail were thought unlikely to yield useful information. A permissive method of interviewing proved more effective, as a close and confidential relationship with the interviewer was found to result in a greater inclination to give genuine answers.[8] The interviews were conducted in the year 2000.

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[3] In the broadest sense this category might include employees of the public administration and the law enforcement agencies.

[4] HYMAN, HERBERT: *Survey Design and Analysis. Principles, Cases and Procedures.* The Free Press of Glencoe. 1965. p. 121-137.

[5] SCHEUCH, ERWIN K.: Das Interview in der Sozialforschung. In König ed. Handbuch der Empirischen Sozialforschung. Erster Band. Stuttgart : Ferdinand Enke Verlag. 1962. p. 152–165.

[6] RUGG, DONALD: *A Study of the No-Opinion Vote in Public Opinion Polls.* Ph.D. diss. Princeton University, Princeton. 1941.

[7] ATIYAH, P.S.: *Pragmatism and Theory in English Law.* Stevens and Sons. London 1987.

[8] ROGERS CARL R: The Non-Directive Methods as a Technique in Social Research. *American Journal of Sociology* 50. 1945.

The hypothesis of the descriptive research concerning flaws in the recruitment process was that the admission into judicial bodies and the subsequent internal advancement in the hierarchy thereof is, in a large number of cases, independent of objective criteria. The expression „objective criteria" is meant to indicate certain abilities, skills or requirements that can be obtained or fulfilled in an absolute and relative sense by anyone.[9] The absolute criteria involve certain minimum standards required by legal regulations, such as nationality, law degree, perfect criminal record. On the other hand, there are several indicators that are meaningful only in comparison with other applicants, signalling the relative aptitude and proficiency of the candidates, for example factual knowledge, mental condition, cognitive abilities, association skills. We picked the high school grade point average, the qualification of the university diploma and the prescribed internal professional ratings as relevant partial definitional indicators.

The hypothesis of our explanatory research was that since the selection process lacks objective criteria the selection is largely based on the capitalisation on acquaintances, i.e. utilising personal acquaintances or family ties in order to ensure the favourable assessment of the application. This hypothesis was substantiated by conducting personal interviews with a relevant number of individuals.[10]

As a matter of fact, some hypothetical assertions and probability statements were made during both the descriptive and explanatory researches that are not closely connected to our key problem but were nevertheless included in the text for easier understanding. In Hungary no similar research has so far been conducted. Therefore we were not provided with accepted definitions and concepts or even settled hypotheses in advance. In a situation like this one inevitably turns to assumptions and probability statements.[11] Hopefully, further research will be able to clarify and elaborate on our conclusions, and reveal more accurate findings.

2. *Law Students. The First Step of the Selection and Socialisation Process*

Due to the special structure of the Hungarian legal system, to be able to understand the following description of the actors of the judiciary it is vitally important to examine the status of law students as well as the training of lawyers in Hungary. In contrast to France and other similar European countries, in Hungary the university is generally the only place where lawyers can get formal training before getting a job. Legal education lasts 10 semesters (5 years) and at the end of their studies, students are required to take an oral examination in the most important subjects as well as the obligation to write a thesis. On passing the final examinations, they are conferred the degree of doctor of law. In the Hungarian system, legal education has been unified, i.e. a lawyer having a law

[9] The concept of objective criteria is constantly referred to in public or private communications in Hungary and is practically identical to the definition proposed by us. Therefore it is rather a corresponding or reporting definition according to the terminology employed by NOWAK, STEFAN: *Methodology of Sociological Research – General Problems*. (Hungarian transl.) Közgazdasági és Jogi Könyvkiadó, Budapest, 1981, p. 101.

[10] The relevant number of individuals – taking account the target group and all of the sub-categories as well – has been determined with the purpose of securing an acceptable margin of error.

[11] NOWAK, STEFAN: op. cit. p. 35.

degree and 3-years' work experience (up to 1997 only 2 years of occupation was prescribed) is allowed to take the final professional examination to obtain a general qualification for any legal profession. Having successfully fulfilled the examination requirements they may become attorneys, or they can apply for other jobs, e.g. at the prosecutor's office or at the Courts.

2.1. The Enrolment of Law Students

The training of law students, following a several-hundred-year long history of organic development, took a sharp turn with the beginning of the communist era in Hungary. As in other segments of Hungarian society, the State initiated a strictly planned economy, and attempted to take control over training and education as well. During this period the number of people having the opportunity of obtaining a degree was kept within strict limits by the ruling power. Only a small proportion of students, having obtained a high school diploma, was admitted to a college or university.

Apart from this, due to the strictly planned economy, fewer lawyers were needed in Hungary. Thus legal education was available only in three – later in four – Hungarian cities, where only a small number of students could participate in the training. The annual student intake at the faculties of law was about 100 in the 1980s. The submitted applications for law training typically exceeded the number of the available places two- or three-fold even though, according to previous sociological research conducted in the 1970s, white-collar workers encouraged their children to opt for professions of a higher esteem such as that of a physician or engineer. In the last decade of the so-called „Kádár-era", the prestige of lawyers was more or less restored, especially that of attorneys, since it was considered one of the possible ways of getting „rich" in Hungary. In the early 1990s the government abolished the ceiling limitation on the number of attorneys, and the private sphere began to show signs of development as well. As a result, the attorneys were provided with more and more work assignments, further strengthening this trend. Consequently, a growing interest appeared in studying at the law schools. Meanwhile the government initiated changes in educational policy, trying to find a way of handling the worsening situation of unemployment by opening up higher education with a view as well to increasing the number of people with a university degree.

Interest in a legal career has been constantly growing since the democratic changes in the political system, and now it seems it has reached its peak. The founding of new faculties of law and the growth in the number of correspondence courses, which are becoming the most popular form of education and the most important source of income for the universities,[12] also facilitated the above-mentioned process. According to data provided by the Central Bureau of Statistics, in 1997 only one in every four applicants was admitted despite the fact that the number of enrolling students tripled. In 1998 this ratio slightly increased but still stayed well under one third (1 in every 3.34). Several years ago only a few thousand law students attended Hungarian universities, while at present more than 20, 000 do so.

[12] In Hungary, at present, law schools can be found in seven cities. These are Budapest, Debrecen, Győr, Kecskemét, Miskolc, Pécs, Szeged.

In the socialist era, the enrolment was distorted by many factors. The first of them can be identified only if one takes into consideration the workings of a monolithic political establishment. The success of an application to a university was determined, inter alia, by social background, because those of a working class origin had an advantage over those whose parents were considered to pursue a white-collar profession. The State wanted to demonstrate the dominance of worker classes through this affirmative action in the enrolment. This affirmative action policy gradually grew weaker, and in the late 1980s it came to an end. It was also common knowledge that political relations and personal acquaintances played a role in the extremely stiff entrance exams. Firstly, the ruling political power could pressure the academic board into supporting a certain applicant. Secondly, family ties or acquaintances could have a „positive" influence on the evaluation of an applicant's performance. Of course, in retrospect, it is difficult to determine the real extent of this unjust discrimination, but certainly the distorting effect concerning the enrolment of students was quite significant. From the 1990s, such possibilities have been significantly reduced because of the strict control over the procedure of admission exams. The capitalisation on acquaintances is traditionally of major importance in Hungarian society so, consequently, a total disappearance of this phenomenon is not expected in the near future. At present, another distortion, of a social nature, deserves a mention. During the period prior to the changeover, the social security system was no longer able to provide the previous level of protection, which had an detrimental effect on the system of financial support intended to assist students. For a short period, even university fees were introduced due to constraining budgetary measures. Although today there is no longer such a thing as a tuition fee for undergraduate students, it is not suggested that students of lower social status are not at a disadvantage. Students of higher social status are well-represented at the faculties of law, and there has been hardly any effort made in dealing with this inequality. Currently a system similar to those already operating in some other countries is being established, its principal aim being to help students in need by offering loans at a preferential rate. [13]

3. The Central Figures of the Judiciary: the Judges

The situation of judges, like that of the other white-collar professionals, was not too „rosy" in the last decade of socialism, and in the period just after the political changeover. Due to the degradingly low salaries, the number of applicants for the job of an assistant judge remained low. The few applicants for this job wanted either to carry out high standard legal work in a peaceful and more or less politically independent environment[14] and had no opportunity of working as an attorney or legal adviser, or they wished to gain professional experience and useful contacts. Some in exceptional cases were motivated by an attraction to this profession. To work in a Court was especially preferred by women who wished to have a professionally challenging job, but did not

[13] The new student loan system introduced by the government in 2001 might have a positive effect on the proportion of those coming from disadvantaged backgrounds.

[14] Research from the perspective of sociology of law found that the Courts enjoyed a relative degree of independence in the 1970s and 1980s. Although the institutional independence of the Courts was attained neither in theory nor in practice, the ruling political power interfered in judgements only in exceptional cases.

want to neglect their families. Working as a judge gave them a degree of stability, in contrast to working as an attorney. A judge could take for granted a small but guaranteed income and could stay in his post until retirement. As a consequence, in the socialist era the prestige of the profession declined, the staff became dominated by female employees, and a degree of counter-selection could be observed. However, this counter-selection did not cause the professional standard to drop below a critical level. It was, above all, the elitist nature of higher education that ensured that the several hundred law students graduating each year from the universities were of a consistently high standard. So if someone having obtained a degree certificate with a poor rating applied for the job of assistant judge, his admission did not significantly affect the standard of the administration of justice. Moreover, a Court was admittedly the most suitable place for gaining professional experience. Consequently a number of graduates opted for a Court until having taken the final professional examinations, even if they wanted to become an attorney later on.

This trend was made possible in 1991 by the liberalisation of the admittance to the Bar and by the introduction of a unified system of professional examination. As a result, the following unusual situation developed in Hungary: for a recently appointed judge, or even for a judge having made an impressive career – in terms of remuneration and social prestige – working as an attorney seemed to be a much more favourable alternative than working as a judge. So, following the changeover, a great many left the Bench and applied for the Bar.

With the radical increase in the salary of judges and prosecutors, the government of the early 1990s helped to alter this situation quite a lot. However, the salary of a judge could still not compete with the income of an attorney. The Courts, previously facing a manpower shortage, were suddenly inundated with law students graduating in increasing numbers and who had apparently recognised the financial security offered by this profession. The immediate effects of this process materialised primarily in the provincial towns in law schools where there were no vacancies even beforehand. In these towns there has been strong competition among applicants for a vacant job of assistant judge[15] involving students with the best academic performance. Consequently, the vacancies in Courts were gradually filled up in the smaller towns as well as in the capital. In addition, the Ministry responsible for the administration of the judiciary created several hundred new posts for judges which were mostly occupied by young lawyers. This trend was paralleled by a migration of experienced judges able to change their professions. The main reason for this phenomenon was that the salary increase had been gradually undermined by the effects of inflation. Moreover, due to the peculiarities of the salary system, there was not much difference between the income of judges starting their career and that of judges with an established reputation. This generated a situation which is prevalent even today, namely that despite the large number of practising judges, young and old alike, there is still a shortage of judges with sufficient experience and adequate work capacity.

Even though the financial reform of 1997 had beneficial effects, it was rather the gradual oversupply of attorneys that brought the above-mentioned process to a halt, and

[15] One way of obtaining the required work experience for the final professional exams is to work as an assistant judge.

thereby prevented the further migration of experienced lawyers. Nowadays fewer and fewer judges are willing to risk their positions for the precarious profession of attorney.[16]

The growing interest of the younger generations in the jobs available at Courts enabled them to apply the strictest criteria almost everywhere in the selection of clerks of the Court, and later on for that of the judges. The welcome changes to the legal profession made by applying the strictest criteria meant, for instance, that the career of a judge was at last appreciated in the eyes of lawyers. Alas, this was upset by a new counter-selective mechanism which, in our view at least, was not addressed by the earlier reform of the judiciary.

In 1997 there was a comprehensive reform of the judiciary. One of the constituent elements of this reform was the act on the legal status and the salary of judges, an important part of which was the modification of the regulations and conditions of obtaining a position as a judge. Even though the reforms made progress in solving a great many problems, it did not achieve a breakthrough on one of the most important issues, namely the sound selection of judges. The new Act introduces stricter criteria concerning the admittance of prospective judges and extends the period of practice necessary for the appointment from two to three years. Moreover, the Act prescribes a psychological examination prior to the appointment and makes the competition system mandatory with respect to the selection of the judges. The new regulations were supposed to ensure the consistency of the administration of justice and to guarantee that the judges meet strict professional and ethical criteria. We believe, however, that this could have been and should be promoted by providing solid financial support and by introducing detailed, objective, impartial regulations governing the selection and promotion of judges. The reform neglected this question and, in our opinion, the Act failed to offer a solution to the underlying problem, and seems to have brought about a certain worsening of the situation. At present, similar to the previous situation, it is the president of the County Court[17] who makes the actual decision on the nomination of the clerks and judges of a Court, though officially the appointment is the task of the President of the Republic. While in the past the president of a County Court was obliged to take into account the opinion of the Judicial Councils,[18] now because of the new regulation he is no longer required to do so.

In our view, this is the point that renders the competition system rather problematic and practically unworkable. If the opinion of the Judicial Council can be disregarded with respect to the nomination and there are judges who are ready to capitalise on acquaintances, such an institution becomes a pseudo-democratic ornament. The discretionary power rests too heavy on the actual person responsible for the nomination and extent to which he takes into account professional criteria. It is recognised, however, that these criteria don't always play a major role. At present, generally it is the personal acquaintance that matters for the employment of clerks of a Court as well as the

[16] According to several former judges interviewed by us, this can also be attributed to the fact that it is difficult for judges to get accustomed to having to perform tasks in Court before ex-colleagues. In some cases it can lead to emotional conflicts and embarrassing situations.

[17] There are 20 counties in Hungary. The County Court is the second level of the judicial structure. It is the president of the County Court who is responsible for the external administration of Courts belonging to a county.

[18] The Judicial Council is a self-governing body of judges, the members of which are selected by the judges of a particular county. These members are selected from among themselves.

appointment of judges. There aren't any competitive examinations, thus the competition system is a mere formality. At places where there are a great number of candidates, an assistant judge is employed only exceptionally on the basis of the results of the degree certificate or of other achievements. It is common knowledge that the children of judges are preferred to other candidates, which is frequently and openly justified ideologically by the judges on the basis of family socialisation, the possibility of learning from the parents, and so on.[19] The only aspect of affirmative action that could be considered neutral as regards personal connections, is perhaps the fact that male candidates are preferred to female ones, as the judges responsible for the nominations consciously struggle against feminisation. There are minimum standards of course that must be met. Nevertheless, it is rather exceptional for a president making a decision concerning a nomination to completely disregard „personal" aspects. Thus a new form of counter-selection can be observed since the political changeover. It is a most unfortunate phenomenon in the judiciary, since if the Courts are not impartial and objective in this field, society cannot be expected to have much confidence in impartial and objective verdicts in law-suits.

Recent public opinion polls suggest that the index of confidence calculated for the judiciary is rather typical. It is much higher than that of the police, Parliament, the military, the government, the political parties and trade unions. However, it is very low compared to the confidence in the President of the Republic, the Constitutional Court or even the municipalities. Only one tenth of the population is of the opinion that judges work at an adequate pace. The majority were not quite sure that the judges are impartial and incorruptible.[20] Although our survey shows that the majority of lawyers still believe that in today's Hungary the judges are incorruptible, a counter-selective mechanism like the above may cause not only a long-lasting deterioration in the standard of the administration of justice, but may also undermine the reputation of the Courts[21] (Badó et al. 1997, 259).

We propose that a new regulation of the selection process is urgently needed, one which is more objective and as detailed as possible so that, in the future, researchers of the judiciary will no longer have to survey family connections and personal acquaintances as well to provide a true analysis of the Courts. In addition to the requirement of objectivity in the selection process, it may be equally important to establish a system of criteria that could counter-balance the strengthening of conformity generally characterising the Courts in the continental law family. In Hungary and in the former socialist countries this pressure of conformity still plays an important role, as it was then vital for the communist regime to form and reinforce such attitudes. Without moral courage, therefore, judicial independence will remain an abstract idea, which can be discussed only on an academic level. Should this state of affairs remain as it is now, the sole reward for the judges in the civil service might be just to be recognised by a superior authority for anticipating its rulings.

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[19] It would be fine if the children of legal professionals were also selected on the basis of open competition. This would then counter suspicions of nepotism as they would then have to be selected according to merit.

[20] Survey conducted by Medián Survey Institution. Népszabadság, 30 September, 2000.

[21] BADÓ ATTILA, LOSS SÁNDOR, SZILÁGYI ISTVÁN, ZOMBOR, ATTILA. *An Introduction to the Sociology of Law*. Trans. Bíbor Kiadó. Miskolc, 1997.

4. The Prosecutors

In 1936 the Soviet Socialist Constitution, which served as an example for other socialist countries, initiated a system of public prosecution entirely different from that of democratic States. The traditional activity of prosecutors, namely to carry out prosecuting duties in criminal proceedings before Courts became secondary, and the main function of the prosecution – owing to the lack of other organs ensuring legal protection – consisted in safeguarding the rule of law. In principle the prosecution should have been responsible for the supervision of individuals and the whole State organisation with the exception of the State organs on the highest level. In the socialist countries there were serious expectations of the prosecution body to secure the so-called „socialist legality", which could be realised only in a distorted form under the political circumstances. The organisation of public prosecution was provided for in the Hungarian Constitution of 1949. However, it was not until 1953 that the prosecution body really began to function. On the basis of the Constitution, an independent body, subordinate only to the authority of Parliament, came into existence. The prosecution quickly fell victim to the practice of using units of State organisations directly for the interests of the political system ruled by the one existing party. It was an open secret that the interests of party politics had a direct influence on the prosecution. The investigations carried out in the framework of the so-called general supervision of legality pursued mainly political objectives and, as a consequence, the prosecution had a reputation even worse than that of the Courts. As a result, in the last decades of socialism working as a judge was much more respectable than working as a prosecutor despite the fact that judges and prosecutors received identical salaries.

There have not been any major changes regarding the prosecution body since the political changeover. In 1989, subsequent to the amendment of the Constitution, the Act on the prosecution was also amended [Act V of 1972]. The most important change was that the term served by the chief public prosecutor became less dependent on that of the Parliamentary period of office by extending the duration of this position from four to six years. Afterwards debates began concerning the role of the prosecution and its place within the State organisation, which continue to this day.

In summary, the changes concerning the public prosecution carried out in the course of the judicial reforms did not notably affect either the functions of prosecutors or the organisation of the prosecution body. The main objective of the amendments was to extend the changes concerning the legal status of judges to prosecutors as well, since the prosecutors react strongly to any attempts which aim to put the judges into a more advantageous position. The explanation for this can be found in a peculiar sense of solidarity and unity developed during the years of socialism. The prosecutors' and judges' offices were, and are, quite frequently located in the same building complex, and this, according to attorneys, has resulted in an „unsound" coexistence, incompatible with the requirements of a constitutional State. Being well aware of this undesirable situation between the two social groups, the Bench has attempted to effect the division of different functions and initiated a slow separation process, creating manifest tensions from time to time. In return, the government has been attempting to maintain at least the equality of salaries. Although judicial independence and the privilege of working at home granted to judges in most cases makes the career of a judge more appealing even

today, it is hard to discover any differences between the two professions concerning other rights, which is also true with respect to obligations.[22] Similar to the situation of judges, in the course of the reform of 1997 an examination of professional competence was introduced for prosecutors as well. Then the periodical evaluation of the work of prosecutors became mandatory. As in the case of judges, it can be observed that a new counter-selective mechanism replacing the former one is also having an impact on the selection of prosecutors. Before the political changeover it was difficult to fill the vacancies for prosecutors at many work places, as anyone who was qualified generally opted for another legal profession. However from 1992 the interest of being a prosecutor has steadily grown, which is also confirmed by statistical data. According to the statistics, there were almost 200 vacancies in 1991, but by 1998 these kind of vacancies disappeared. Consequently, because applications far exceed the positions available, the capitalisation on acquaintances plays a major role, the objective criteria becoming of secondary importance. 'It is not what you know, but who you know that is important.'

Year	Procedures Filed	No. of Prosecutors Employed	Cases per Prosecutor	No. of Permitted Positions
1988	335,240	939	358	1046
1989	355,364	949	375	1046
1990	440,278	963	458	1119
1991	528,442	992	533	1166
1992	525,832	1,025	514	1104
1993	450,485	1,070	422	1108
1994	553,228	1,098	504	1108
1995	605,633	1,100	551	1108
1996	656,512	1,109	592	1112
1997	718,502	1,169	615	1235
1998	776,663	1,251	621	1235
1999	723,986	1,265	573	1235

5. The Attorneys

5.1. The Reform of the Status of Attorneys after the Political Changeover

Before the changeover, there was a big difference between underpaid salaried lawyers with low prestige (prosecutors, judges, notaries etc.) and a restricted number of attorneys forming an exclusive caste with a high standard of living. Practically the only way of achieving financial success for a lawyer was to become an attorney. However, without attorney parents, acquaintances and party connections it was virtually

[22] An interesting exception is the regulation on the termination of employment of judges and prosecutors reaching retirement age. In the case of both professions, employees are allowed to work even after the compulsory retiring age of 70. However in the case of judges it is a right, while in the case of prosecutors it is only a possibility depending on permission.

impossible to be called to the Bar. In 1991 the Bar was reorganised. [Act XXIII of 1991]

Afterwards, in the course of the reform of the judiciary, a new law was passed in 1998 that contained some amendments but adhered to the earlier principles. [Act XI of 1998]

With the act of 1991 the attorneys regained their autonomy, and the private practices of attorneys were also restored in accordance with Hungarian traditions and European norms. The former regulation of 1983 pertaining to counsels [Act IV of 1983] only permitted the practice of the legal profession in lawyers' co-operatives in order to secure State control. The Act of 1991, in contrast, gave attorneys the freedom to work in a private practice or in a lawyer's office. This meant the termination of forced co-operation which, as a consequence, led to the dissolution of a considerable number of lawyers' co-operatives.

In the new Act, the definition of the job description of an attorney was also significantly changed. According to the regulation of 1958 [Act XII of 1958], the attorney „should promote the enforcement of the client's rights with conscientious work in order to secure socialist legality". The regulation of 1983 also says that an attorney must not hinder the authority in its lawful work. The new Act, however, omits this latter criterion and reads as follows: „The attorney by practising his profession promotes the maintenance of his client's rights and the fulfilment of his obligations by legal means and in a legal way. Furthermore, the attorney must assist the parties in a law-suit, or in a peaceful settlement reached without involving procedures before a Court."

With the new Act the lawyer's fees were also liberalised. According to the Act of 1983, lawyers' fees could be charged only within the limits prescribed by the Attorney General. By virtue of the new Act, the fee became a matter of open mutual agreement, with the exception of the fee for counsels appointed by the Court, and the costs of attorneys that can be awarded in legal proceedings and in the case of judicial distraint.

5.2. The Consequences of Liberalisation

As we pointed out earlier, since 1991 anyone who met certain objective requirements (law degree, professional examination, suitable office) could be called to the Bar and commence practising. All these changes caused the Hungarian community of lawyers to be radically restructured within a few years and led to a steady increase in the number of attorneys. While in 1988 there were 2200 practising attorneys in Hungary, 750 of them working in the capital, after the liberalisation this number almost tripled within a couple of years. In 1995 their number stood at 6000, and by 1997 there were about 7000 attorneys in Hungary, 3400 of them practising in Budapest. In 1999 the number of attorneys reached its peak (7900), and in 2000 a slight decline was observed.[23] The sharp increase in the number of attorneys in the 1990s can be accounted for not only by the appearance of recently graduated lawyers on the labour market, but also by the fact that

[23] In addition to the increase in the number of actively practising attorneys it is worth noting that there has also been a growth in the number of attorneys who have suspended their profession. While in 1995 only about 5% of attorneys did so (and were thereby exempted from paying certain fixed costs), this figure rose to about 10% by 2000, which seems to indicate that it is evermore difficult to make a living on the income provided by that profession, as one of the typical reasons for the suspension is the exemption from paying Bar dues and other costs.

after the opening of a career which had been closed for the majority, many lawyers decided to change their professions. A survey on the mobility of lawyers revealed that it was primarily males who ventured to branch out, a point which also becomes apparent if one compares the proportion of men to women among attorneys with that of other legal professions. In contrast to the preponderance of women in the Courts, the prosecution office has considerably more male attorneys than female ones. This can be attributed to the fact that this profession depends very much on market conditions, and it thus means a hectic, frequently unpredictable way of life that cannot be easily reconciled with the role of a mother. A number of other reasons, typical not just of Hungary, can also be mentioned. These include confrontational frustration, the clients' strong demand (sometimes influenced by prejudice) for a male authority, and financial insecurity.

The appearance of foreign lawyer's offices in Hungary is related to the liberalisation and privatisation as well, and, for a long time – until the Act of 1998 – these offices operated under unregulated conditions. They appeared on the scene at the same time as foreign investors and acquired a large slice of the legal market, which was regarded with displeasure by many. The aversion to this situation is illustrated by the sharp criticism which came the head of a renowned lawyer's office: „It was a sort of a colonisation that was brought about by international lawyer's offices in the 1990s in Hungary. They made their foreign clients believe that they could not succeed without them. However, it was the foreign lawyer's offices that could not succeed without foreign clients, as they had zero knowledge of the Hungarian legal system." The Act of 1998 regulated the activities of these offices, operating up until then behind the „mask" of agencies or operating by using the official seal of a Hungarian attorney.

The problem of counter-selection is less acute in relation to attorneys compared to lawyers paid by the State budget. Nevertheless, due to the higher number of attorneys many talk about a certain professional and ethical deterioration, and about frequently occurring client dissatisfaction.[24] This fact is highlighted by the growing number of legal proceedings against attorneys and by the frequent complaints filed to the Bar. Even though there is a demand for a more restrictive admission to the Bar, there seems to be no serious political intent by the government in this respect. In our view, such commitment would not provide a real and lasting solution anyway, as it would result in the return of the previous exclusive nature of the profession of an attorney. However, the symptoms of the process of self-regulation manifest themselves. Nowadays it is becoming more and more difficult to find an attorney or a lawyer's office that will employ recently graduated lawyers. On the other hand, a lawyer cannot take the final professional examinations required for independent practice without three years' work experience. In our opinion, in order to enforce the set of ethical and professional criteria, other solutions (e.g. a more differentiated and separate attorney's exam) should be established besides the natural selection of the market.

[24] TÖRÖK HELGA, BADÓ ATTILA. Előtanulmány a magyar jogászság vizsgálatához. *Bírák Lapja*, 1997. 7:104–112.

Year	Practising Attorney	Attorneys with Suspended Practice	Total	Apprenti-ces	Employed Attorneys	Foreign Legal Advisors
1988	-	-	2200	-	-	-
1995	5850	234	6084	-	-	-
1996	7086	359	7445	-	-	-
1997	7078	371	7449	-	-	-
1998	7283	442	7725	-	-	-
1999	7900	504	8404	1208	26	8
2000	7874	609	8483	1372	54	37

6. On the border of Public and Private Services: the Public Notary

At the end of our study it is worth mentioning a group of lawyers, rarely discussed as „actors of the judiciary" in the relevant literature. However, we claim that they belong here and seem unique from a certain perspective.

After the political changeover, not only did the circumstances for attorneys change quite markedly, but also those for public notaries [Act XLI of 1991]. The new regulation abolished the previous situation where public notaries worked for a Court practically as State employees. Moreover, in the spirit of Act XXXV of 1874 and in accordance with European tradition, the private activities of public notaries were restored. According to the new law, if certain requirements were met, it was the Attorney General who appointed public notaries to an existing post. The Act regulates three major domains of notary activities. One of the most typical tasks of public notaries is the execution of legal documents. Another traditional task of public notaries is taking depositions (legal documents, money and other valuables), as well as conducting notary and other proceedings.

Probate is the most frequent proceeding conducted by public notaries. According to the law, the ruling made by the public notary on notary proceedings is equal to that of Local Courts as far as appeals are concerned.

After the new Act on public notaries was framed in 1991, one can observe the forming of a caste of lawyers similar to the distinguished community of attorneys existing before the changeover. Public notaries, having worked as State employees and receiving a fixed salary, became all of a sudden members of an isolated group of lawyers. Owing to the restriction of the number of public notaries, their offices can be obtained practically on a hereditary basis. The profession of public notaries, on the border of public and private activities, can guarantee both security and high income for itself due to the limited competition. It could be asked whether this situation is equally favourable to society as well.

7. Conclusion

The Hungarian legal profession went through a unique, complicated and painful transitional period following the fall of the communist regime. The community of lawyers has been radically restructured and substantially enlarged. In the period 1990-2000 new challenges were met and overcome, and new attitudes developed.

The political changeover also led to correspondingly large changes in the judiciary. Some aspects of the mechanisms of recruitment and promotion, and the ways of managing the Courts, however, have remained practically intact apart from a change of ideological framework and an updating of the vocabulary employed. In the State controlled sector of the legal profession the counter-selective practices characterising the previous era have survived, and have even become more pronounced as the competition among law graduates reaches a hitherto unheard-of fierceness. It is our firm belief that in this field the lack of market economy conditions has to be countered by a precise and detailed regulation of admission based on an open system of competition.

The transitional period is far from over. It is virtually impossible to ascertain the exact outcome of these profound changes. Nevertheless, the major trends and problems can already be seen after a decade of experience, observation and polling, on the basis of which meaningful proposals might be formulated. The present study purports to do no more, and will hopefully contribute to the better understanding of a fragile segment of a typical Central European society in transition.

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